

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU, HAWAII

October 30, 1974


MEMORANDUM 1974-32

TO: Heads of Departments and Agencies
FROM: KeNam Kim, Comptroller
SUBJECT: Salary Withheld for Indebtedness to the Government

In applying the provisions of Section 78-12, Hawaii Revised Statutes ("salary withheld for indebtedness to the government"), it has been suggested by the Attorney General's Office that the Department of Accounting and General Services not withhold any state employee's compensation without first obtaining documentation from the requesting Department that the employee's indebtedness has been determined by a hearing pursuant to Chapter 91, Hawaii Revised Statutes.

A recent court decision (Civil No. 73-3931, U.S. District Court, District of Hawaii) indicates that the operation of Section 78-12 in some instances may fall short of constitutional due process requirements.

Therefore, all State departments or agencies (except Department of Taxation in certain instances) which request the Comptroller to withhold an employee's compensation for indebtedness to the State, under the provisions of Section 78-12, must furnish evidence with such request that the employee has been provided an opportunity to contest, in a hearing, the legitimacy of the indebtedness. Such hearing must insure the protections provided in Chapter 91. It is suggested that the State agencies consult their assigned legal advisors relative to any questions persons may have regarding the adequacy of its hearing procedures.



KENAM KIM
Comptroller